BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CARLOS CASARES	)	
Claimant	)	
VS.	)	
	)	Docket No. 251,710
EXCEL PERSONNEL	)	
Respondent	)	
AND	)	
	)	
EQUITY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated January 16, 2002. The Administrative Law Judge allowed claimant the replacement of a prosthetic device on his left arm after he suffered a fall on January 24, 2000. By implication, the Administrative Law Judge found claimant's injuries on that date arose out of and in the course of his employment with respondent.

ISSUES

(1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent on January 24, 2000?

(2) Did the Administrative Law Judge exceed his jurisdiction by assessing benefits, in the form of a replacement for a prosthetic arm, against the respondent and its insurance carrier?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be reversed as claimant has failed to prove that he suffered accidental injury arising out of his employment. Instead, the Board finds claimant's injury occurred as a result of horseplay.

Claimant worked for Excel Personnel at Dixon Tomatoes, in the maintenance crew. He performed janitorial type duties, cleaning up, etc. The job involved use of a great deal of water and necessitated that the workers wear a rain suit which consisted of a jacket and

overall pants. The pants were held up by suspenders which were made of elastic rubber. At approximately 12:30 a.m., claimant went to lunch in the break room. As the rain outfits are hot, claimant removed his jacket and undid the suspenders, lowering the pants down to approximately his knees. This was a common practice among the employees over the lunch period. After claimant finished lunch, he walked down a flight of stairs near the break room. Somewhere in the vicinity of the bottom of the stairs was a metal pole, which was painted bright yellow. This pole, which was described as standing approximately 36 inches tall, was in the middle of the floor. For reasons known only to claimant, he decided to leap over the pole, even though his pants were still in the vicinity of his knees. Understandably, claimant, attempting to clear the pole with his body, was unable to clear the pole with his pants. Claimant's pants became entangled in the pole, and claimant fell, striking his left arm and face on the concrete. As a result, claimant suffered a broken left arm above the elbow, a bridge on his front teeth was knocked out and his prosthetic device on his left arm was broken.

Claimant required the prosthetic device, as he had earlier suffered an amputation of a portion of his left arm, below the elbow. That accident was not the result of a work-related injury with this respondent.

Respondent acknowledges that claimant was in the course of his employment, as he was on respondent's premises over the lunch hour. However, respondent contends that claimant's accident did not arise "out of" his employment, but instead occurred as a result of claimant's horseplay.

Claimant contends his injury was the result of a spontaneous act in that claimant simply hopped over the pole. Claimant argues that the injury would not have occurred but/for the fact he was wearing the coveralls. Claimant describes the injury as the result of a simple trip and fall.

K.S.A. 1999 Supp. 44-501 states, in part:

> (a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends.

Arising "out of" the employment is defined as follows:

> An injury arises "out of" the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection

> between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

Injury caused by horseplay does not normally arise out of employment and is not compensable unless it is shown that the horseplay has become a regular incident of the employment. Carter v. Alpha Kappa Lambda Fraternity, 197 Kan. 374, 417 P.2d 137 (1966); Thomas v. Manufacturing Co., 104 Kan. 432, 179 P. 372 (1919).

The Kansas Supreme Court has held that, for an accident to arise out of the employment, some causal connection must exist between the accidental injury and the employment. Siebert v. Hoch, 199 Kan. 299, 428 P.2d 825 (1967).

It is uncontroverted by the parties that leaping over poles was, in no way, an integral part of claimant's employment with respondent. The activity by claimant was merely a spontaneous act. There was no indication in the record that this activity had become a regular incident of employment with this respondent. In fact, there was no indication that any of claimant's supervisors were even aware of the activity until after the accident had occurred.

The Board finds there was no causal connection between the accidental injury and claimant's employment with respondent. The injury occurred as a result of claimant's horseplay and is, therefore, not compensable. Therefore, the Board finds that the Order of the Administrative Law Judge granting claimant benefits should be, and is hereby, reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated January 16, 2002, should be, and is hereby, reversed, and claimant is denied benefits as his injury occurred as the result of horseplay and did not, therefore, arise out of his employment with respondent.

IT IS SO ORDERED.

Dated this _____ day of April 2002.

BOARD MEMBER

c: Donald T. Taylor, Attorney for Claimant
Daniel N. Allmayer, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director